IN THE MATTER OF APPLICATION OF

BANKERS TRUST COMPANY

For Refund of Sales and Use Taxes imposed pursuant to Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City Local Law No. 73 of 1965, as amended, and the local laws, ordinances or resolutions of the Counties of Nassau and Suffolk for the period commencing August 1, 1965 and ending August 31, 1965, for two quarterly periods ending November 30, 1965 and February 28, 1966, for the period commencing March 1, 1966 through May 31, 1969, and for the period commencing June 1, 1969 through December 23, 1969.

FORMAL DETERMINATION

The taxpayer, Bankers Trust Company, having duly and timely filed applications for refund of sales and compensating was takes for the portode August 1, 1065 through August 31, 1065 September 1, 1965 through November 30, 1965, December 1, 1965 through February 28, 1966, March 1, 1966 through May 31, 1969, and June 1, 1969 through December 23, 1969 imposed pursuant to Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City Local Law No. 73 of 1965, as amended, and the local laws, ordinances or resolutions of the Counties of Nassau and Suffolk; and said applications for refund having been denied by the State Tax Commission; and the taxpayer then having duly and timely filed applications for a hearing by the State Tax Commission to review the denials of the requested refunds; and a stipulation of facts having been entered into by and between the taxpayer, Bankers Trust Company, and the State Tax Commission, a copy of such stipulation of facts together with the exhibits which are part thereof, being hereto attached and made a part of this determination, the State Tax Commission hereby finds the following facts:

1. The taxpayer, Bankers Trust Company is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following: electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give away premiums. All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes have been paid, are of a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder. 4. All of the aforesaid tangible personal property services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally, and upon which taxes have been paid by such purchasers whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof. The taxpayer concedes that taxes were -2lawfully due and owing from purchasers generally. The taxpayer contends however that those purchasers which were doing a banking business under the facts set forth in Finding of Fact No. 2 were immune from the tax during the periods involved.

5. There is no language contained in Articles 28 and 29 of the Tax Law, or any local laws, ordinances or resolutions under the authority of such latter article, which imposes sales or compensating use taxes on purchases by banks or banking institutions in a manner different than upon purchasers generally, nor is there any language contained therein which states that banks or banking institutions, whether state or national, are exempt from paying sales or compensating use taxes on its purchases; furthermore, paragraph(2) of subdivision (a) of section 1116 of the Tax Law grants to the United States of America and any of its agencies or instrumentalities as purchaser, user or consumer, an exemption only insofar as it is immune from taxation. Such paragraph reads as follows:

"Sec. 1116. Exempt organizations.--(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

"(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;"

6. As decided by the United States Supreme Court in First Agric. Nat. Bank of Berkshire County v. State Tax Comm., 392 U.S. 339, a state has no power to tax national banks unless specifically authorized by Congress and that Congress had not, prior to the expiration of the periods in issue, authorized the imposition of sales and use taxes; that the New York Court of Appeals in the case of Liberty Nat. Bank & Trust Co. v. William K. Buscaglia, 23 N Y 2d 933, reversing 21 N Y 2d 357;

affirmed a lower court order exempting national banks from sales and use taxes upon the constraint of the <u>First Agric.</u>

Nat. Bank of Berkshire County decision <u>supra</u>, and of

Dickinson v. First Nat. Bank of Homestead, 393 U.S. 409;

that accordingly the taxes imposed by Article 28 and under the authority of Article 29 of the Tax Law of New York State were not among those permitted by Congress in R.S., Section 5219 (12 U.S.C. Section 548) and national banks were therefore immune from taxation under such Articles.

7. Section 4 of Article XVI of the Constitution of the State of New York, which Article was adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938, provides as follows:

"ARTICLE XVI

* * *

- "§ 4. Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state."
- 8. On December 24, 1969, immediately subsequent to the taxable periods herein, the law set forth in section 548 of Title 12 of the United States Code (R.S., Section 5219) was amended to permit the imposition by states of sales and compensating use taxes upon national banks; that from December 24, 1969 to date, by virtue of the provisions of the aforesaid Federal statute and paragraph (2) of subdivision (a) of section 1116 of the Tax Law of New York which exempted instrumentalities of the United States of America from sales and use taxes only if immune from taxation, national banks lost their immunity, and from December 24, 1969 to date sales and compensating use taxes have been imposed upon national banks; that the taxpayer is not contesting the payment of sales and compensating use taxes for any periods subsequent to December 23, 1969.

Based upon the foregoing the State Tax Commission hereby

DETERMINES:

A. That the sales and compensating use taxes imposed

by Article 28 and under the authority of Article 29 of the Tax

Law are imposed upon purchasers generally.

B. That, accordingly, such taxes are general taxes

and not imposed upon banks as a class; that such taxes are imposed

without discrimination upon a general class of purchasers including

banks. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

C. That neither the spirit nor the letter of

section 4 of Article XVI of the Constitution of the State of

- c. That neither the spirit nor the letter of section 4 of Article XVI of the Constitution of the State of New York is violated by the provisions of Articles 28 and 29 of the Tax Law and of any laws, ordinances or resolutions made under the authority of Article 29, which impose taxes without discrimination, upon a broad class in which banks are included, not because they are engaged in banking but because they are purchasers. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)
- D. That throughout the entire taxable period herein, the restriction set forth in section 4 of Article XVI of the Constitution of the State of New York had no application, and state banks remained subject to the sales and compensating use taxes, since such periods were prior in time to December 24, 1969, upon which date Congress granted to the states permission to impose sales and compensating use taxes on national banks.

 (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)
- E. That any sales and compensating use taxes which may have been paid by the taxpayer during the periods involved were

required to be paid; accordingly, the State Tax Commission properly denied the taxpayer's application for refund, and such denial of refund is hereby affirmed.

STATE TAX COMMISSION

Benes Marcley Wilton Koum

DATED: ALBANY, NEW YORK

DECEMBER 22, 1971

BIRID IRA COMMIDDION

-6-

IN THE MATTER OF APPLICATION OF

BANKERS TRUST COMPANY

For Refund of Sales and Use Taxes imposed pursuant to:
Article 28 and under the authority of Article 29 of
the Tax Law, and imposed pursuant to New York City
Local Law No. 73 of 1965, as amended, and the local
laws, ordinances or resolutions of the Counties of
Nassau and Suffolk for the period commencing
August 1, 1965 and ending August 31, 1965, for two
quarterly periods ending November 30, 1965 and
February 28, 1966, for the period commencing March 1,:
1966 through May 31, 1969, and for the period commencing June 1, 1969 through December 23, 1969.

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED that the following facts are applicable with respect to all the above-captioned periods and further that such facts shall be taken in lieu of a formal hearing as the basis for any determination by the State Tax Commission,

Bankers Trust Company (hereinafter called "the taxpayer") and the State Tax Commission having waived the right to present any further evidence at a hearing or to make any further examination or inquiry except as set forth below:

- 1. The taxpayer filed applications for refund of sales and compensating use taxes on tangible personal property, services and other items purchased or used by it within this State, such taxes being imposed under the laws specified in the caption hereof.
- 2. Such applications for refund, copies of which are hereto attached and marked Exhibit Al, A2, A3, A4, and A5 were duly and timely filed pursuant to section 1139 of the Tax Law for the periods, in the amounts, and on the dates set forth below:

PERIODS	TNUOMA	DATE
August 1, 1965 through August 31, 1965	\$ 17,499.72	September 17, 1968
September 1, 1965 through November 30, 1965	126,051.58	December 17, 1968
December 1, 1965 through February 28, 1966	118,191.95	March 19, 1969
March 1, 1966 through May 31, 1969	2,185,845.04	June 20, 1969
June 1, 1969 through December 23, 1969	647,923.98	April 16, 1970

- 3. The first three applications for refund filed for the periods August 1, 1965 through August 31, 1965, September 1, 1965 through November 30, 1965 and December 1, 1965 through February 28, 1966 were denied by the State Tax Commission on June 19, 1969, the application for a refund filed for the period March 1, 1966 through May 31, 1969 was denied by the State Tax Commission on July 7, 1969, and the last application for a refund filed for the period June 1, 1969 through December 23, 1969 was denied by the State Tax Commission on May 5, 1070, copies of letters by the State Tax Commission of May 5, 1070, copies of letters by the State Tax Commission denying such applications being hereto attached, and marked Exhibit Bl, B2 and B3 respectively.
- 4. The taxpayer, on September 17, 1969, duly and timely filed applications for a hearing by the State Tax Commission to review the denials of the refunds requested in the first four said applications and on July 1, 1970 duly and timely filed an application for a hearing by the State Tax Commission to review the denial of the refund requested in the last said application, copies of letters applying for a hearing being hereto attached and marked Exhibit C1, C2 and C3.

- 5. The taxpayer is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State, primarily in the City of New York.
- 6. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States.
- 7. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following:

electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give-away premiums.

All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes had been paid, are of

a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder.

- 8. All of the aforesaid tangible personal property, services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally and upon which taxes have been lawfully due and owing and paid by such purchasers, whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof; provided, however, that this paragraph shall not be construed as a stipulation as to whether or not such taxes were lawfully due and owing and paid by purchasers doing a banking business in the State of New York in the manner set forth in paragraph 6 of this stipulation.
- 9. No determination denying a refund of tax shall be made by the State Tax Commission on the ground that proof of payment of tax by the taxpayer has not been shown, unless the taxpayer is first afforded an opportunity to present proof of such payment

acceptable to the State Tax Commission.

- the taxpayer shall first be required to submit proof that the taxes have been paid by it. Furthermore, before any refund can be made, the State Tax Commission shall have the right to examine into the proof offered by the taxpayer and to audit the books and records of the taxpayer to ascertain the amount of taxes paid. Nothing in this paragraph shall be construed to deprive the taxpayer of any lawful remedies to review the amount refunded in the event that a refund is made and the amount refunded is less than the amount requested by the taxpayer in its applications for refund.
- which the taxpayer has duly filed timely applications for refund of sales and use taxes and also timely applications for hearing in the event of a denial of the applications for refund, the State Tax Commission may defer the issuance of determinations for such periods until a final determination has been made by the State Tax Commission or by the courts with respect

to the periods herein.

STATE TAX COMMISSION

Counsel for State Tax
Commission

BANKERS TRUST COMPANY

Attornor for Morror

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE SALES TAX BUREAU STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT			
NAME OF CLAIMANT			IDENTIFICATION NO. (IF REGISTERED VENDOR)
		·	
STREEL TRUST Company			PERIOD COVERED BY CLAIM
City 16 Mall Street	STATE	ZIP CODE	August 1, 1965 - August 31, 1965
NAME TOTAL SECTION (IL ANA)	Kew York	1.0015	17,499,72
STREET ADDRESS		•	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY	STATE	ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

One June 17, 1963 the Supreme Court of the United States in the case of First Assistant United Intional Fink of Parisbine Granty v. There Ton Countries, held that state Siles and use takes as successed by intional banks of tangible personal property for their our use were invalid on the ground that states had no power to tan listical banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of cales and nos takes. This case clearly applies to the New York Seles Ton as well as to the Languerus Sales Ton there involved. Article NVI, Esetion 4, of the New York State Constitution provides that state banks may not be subject to uncorner in circumstances in terms necessary are invalid and point thorace is claimed.

Since this claim for refund includes all value and use takes paid by the tempoyer to renders or to the Department of Temption and Finance during the period covered by the claim, it is not procticable to include evidence of payment with this claim. Evidence of payment of these taxes is in the peccession of the taxpayer and is available for review. We taxes of which a refund is claimed have been refunded to the taxpayer by a vendor.

The above refund claim of \$17,499.72 consists of \$1,461.04 of Compensating una Fax and \$16,030.63 of Sales Taxes paid to vandors.

1, II. V. Pollack, Assistant Controller , the claimant named above; or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

1111 Pallack

Losiotron Controller

10ATE 17/12/1

STATE OF NEW YORK - DEPARTMENT OF TAKATION AND FINANCE

ATE CAMPUS, ALBANY, N.Y. 12226

ON FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PPIRT	IDENTIFICATION NO. (IF REGISTERED VENDOR)
Baulers Trust Company	IDENTIFICATION NO. (IT INCOIDS TO
16 Wall Street	Sept.1,1965 thru Nov.30,1955
New York New York 10015	REFUND CLAIMED \$ 126,051.58
NAME OF REPRESENTATIVE (IF ANY)	CREDIT CLAIMED
STREET ADDRESS	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY STATE ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessory to properly substantiate your claim.

On June 17, 1968 the Supreme Court of the United States in the case of First Agricultural Rational Bank of Barkshire County v. Stare Tax Commission held that state Sales and use taxes on furchases by lational banks of tangible personal property for their own use were invalid on the ground that states had no power to tax Hational bunks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case electly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XVI; Section 4, of the New York State Constitution provides that state books may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all seles and use towes paid by the tempayer to vandors or to the Papartment of Tametion and Finance during the pariod covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the tempayer and is available for neview. He tames of which a refund is claimed herein have been refunded to the tempayer by a vendor.

The phove refund claim of \$1.25,051.58 consists of \$6,187.33 of compensating Use tax and \$117:854.25 Sales tames paid to Vandors.

Marold.J. Beach, Deputy Controller , the claiment named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and for credit of sales or use tax, pursuant to the New Yerk State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been poid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not inclu items for which refund or credit was previously received.

TITLE lagaty Sontrollar

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE SALES TAX BUREAU STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT			▼ *	
HAME OF CLAIMANT				IDENTIFICATION NO. TIF REGISTERED VENDOR)
Renkers Trust Company				
STREET ADDRESS				PERIOD COVERED BY CLAIM
	16 Wall Street			Dec. 1, 1965 - Feb. 28, 1966
CITY		STATE	ZIP CODE	REFUND CLAIMED
	New York	New York	10015	s 118,191.95
NAME OF REPRESENTATIVE (IF ANY)				CREDIT CLAIMED
	•			S
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEE CLAIMED ON A RETURN, INDICATE	
CITY		STATE	ZIP CODE	
				PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1968—the Supreme Court of the United States in the case of First Agricultural National Bank of Barkshire County v. State Tax Coumission held that state Sales and use taxes on purchases by National banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National Banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Macsachusetts Sales Tax there involved. Article XVI, Section 4, of the New York State Constitution provides that state banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vandors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claimed herein have been refunded to the taxpayer by a vendor.

The above refund claim of \$118,191.95 consists of \$ 9,721.12 of compensating Use tex and \$108,470.83 Sales taxes paid to vendors.

1. Ronald J. Fletcher, Associate Controller, the claimont named above, as partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tox Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been poid; that no parties of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

Associate Controller March 19, 1969

She instructions on the back of this form

SALES TAX BUREAU STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT	•	
HAME OF CLAIMANT , Danisara Truct Company	IDENTIFICATION NO. (IF RESISTERED VENDOR)	
STREET ACORESS ———————————————————————————————————	PERIOD COVERED BY CLAIM March 1, 1965-May 31, 1959	
Edu York Hau York 10015	2,205,C45.C4	
NAME OF REPRESENTATIVE (IF ANY)	\$	
CITY STATE ZIP CODE	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE	
-	PERIOD	

Give a full explanation below, including all facts on which your blaim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On Jum 17, 1969 the Eutrone Court of the United Spaces in the case of Pirity Acrdesiannal Patternal Part of Controller Course v. Stone For Constanting hold ther stone taken and and tered on purchases by subleast banks of tengible percentl property for their our year wars invalid on the around that arothe had no power to the Renzonal Lepho unloss specifically entherized by Congress, and that Congress had not sutherized the impostite of raics and usa tempo. This cosa electly applied to the New York Selen for as well es to the intouchesates falso Tan times towelved. Artists IVZ, festion 4, of the New York State. Compulações provides chua etore binha máy not ha cubject de comercia la circumstances in which notional bania are not as subjace. Ascordierly, the imposition of the sales Con on through the firmful and ratherd thoused to claimed.

Since this claim for referd includes all nains and use tense maid by the tempayor to wanders er to the furarement of femerica and Vineara during the puriod accorded by the chair, to to not processonia to include avidance of regment with white cloim. Swilance of payment of thics teins to in the percepton of the furneyor and is available for review. He tends of thiself a relund is elected becate here been refunded to the temparar by a venter.

The above refered claim of 92,195,005,00 consider of 907,524,18 of compensating Und the -end \$2,337,910,94 Balsa tempo maid so vendoro.

Thomson U. Polluck Arcreista Centroller _, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE

Ababetate Constaller

STATE YORK - DEPARTMENT OF TAXATION AND 1 NCE SALES TAX BUREAU STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR P				
HAMZ OF CLA	NAME OF CLAIMANT			IDENTIFICATION NO. (IF REGISTERED VENDOR)
	Dankers Truck	Crapany		
STREET ADDRE	ESS			PERICO COVERED BY CLAIM
	16 Wall Street	t		June 1, 1969 - December 23, 1969
CITY		STATE	ZIP CODE	REFUND CLAIMED
	You York	New York	10015	\$ 647, 923.98
KAME OF REFE	ESENTATIVE (IF ANY)			CREDIT CLAIMED
				S
STREET ASSRE	:SS		·····	
•		•		IF CREDIT SHOWN ABOVE HAS ALREADY BEEN
CITY		STATE	ZIP CODE	CLAIMED ON A RETURN, INDICATE
				PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Ca June 17, 1938 the Supreme Court of the United States in the case of First /aricultural Fibigual Fork of Darkshire County v. State Ten Countainen held that state these and use turns on purchases by intional banks of sangible personal property for their own use were invalid on the ground that states had no power to can Hational Banks unless specifically turborized by Congress, and that Congress had not suborized the imposition of sales and two hauss. This case clearly applies to the How York Cales Tax as well as to the Dascainesates dales War there involved. Artisle AFI, Caption 4, of the How York State California provides that there have not be subject to deficient an extensionary in this hatianal banks are not so subject. Accordingly, the imposition of the sales tax on tampoyer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use temes paid by the tampayer to vendous or to the Delictment of Tamerica and Vinence during the paried covered by the claim, it is not prochisable to include evidence of payment with this claim. Ividence of payment of these tames is in the procession of the tampayer and is evailable for review. In tense of videa a result is claim berein have been refunded to the tampayer by a vendor.

The above refund claim of \$547,923.93 consists of \$17,138.25 of compensating Use tox cost \$630,765.93 Sales taxes paid to vendors.

Larran W. Pollaci, Asst. Vice President, the claimant named above, or partner, officer, or other authorized regresentative of such claimant, do hereby make application for refund and or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have compaid; that no partion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

Li orman W. Polloch

ITLE

herierent vice Presseent

April 15, 1978

This determination denying your claim in full, as indicated above, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Law Bureau hearing calendar.

Very truly yours,

ather M. Rackins

Tax Administrative Supervisor Audit and Review Unit

JLB:pdv

The denial indicated above is acceptable to me. I hereby withdraw my applications for refunda filed on Sentember 17, 1968, December 17, 1968 and March 19, 1969 in the amounts of \$17,499.72, \$126,051.58 and \$118,191.95.

Signature

Date



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION JOSEPH H. MURPHY, PRESIDENT A. BRUCE MANLEY

STATE CAMPUS ALBANY, N. Y. 12225 JUI 7 1969 TELEPHONE 474 - 2121

BALES TAX BUREAL

FREDERICK W. TIERNLY DIRECTOR

ADDRESS YOUR REPLY TO Audit Group II

Bankers Trust Company 16 Wall Street New York, New York 10015

> Attention Mr. Norman W. Pollack Associate Controller

Gentlemen:

Reference is made to your claim for refund dated June 20, 1969 in the amount of \$2,185,845.04.

Please be advised that your claim is being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C.548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Duscaglia, 20 N. W. 21 909, Doubt bailed and build liable for those tumer. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination denying your claim in full, as indicated above, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Law Bureau hearing calendar.

Very truly yours,

Tax Administrative Supervisor

than M. Paskin

Audit and Review Unit

JLB:pdv

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on June 20, 1969 in the amount of \$2,185,845.04.

Signature

Date



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS ALBANY, N. Y. 12226

TELEPHONE 474 - 2121

SALES TAX BUREAU

FREDERICK W. TIERNEY

ADDRESS YOUR REPLY TO

Audit & Review Unit

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT A. BRUCE MANLEY MILTON KOERNER

> Bankers Trust Company 16 Wall Street New York, New York

> > Attention Mr. Norman Pollack Assistant Vice President

> > > Claim for Refund \$647,923.98 (4/16/70)

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of \$647,923.98, is hereby being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N.Y. 2d 933, State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination, denying your claim in full, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within minety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Eureau to be held prior to placing your application on the Hearing Unit calendar.

Very truly yours, October M. Raskin

Assistant Chief

_Audit and Review Unit

JLB:aa

The denial indicated above is acceptable to me. I hereby withdraw my_application for refund filed on April 16, 1970 in the amount of \$647,923.98.

Signature

Date

September 9, 1969

State of New York
Department of Texation and Finance
State Compus
Albany, New York 10226

Attention Mr. Arthur M. Paskin
Tex Administrative Supervisor
Audit and Teview Pait, Audit Group II

Centlemen:

In accordance with the provisions of Section 1139(b) of the Tex Law, Bankers Trust Company hereby applies for a hearing before the State and tells seron based epon year distall, Julia data 12, 166, of our claim for a refund of sales and use trues in the amounts of \$17,199.72, \$125,651.58 and \$118,191.95 dated September 17, 1968, December 17, 1968 and March 19, 1969 respectively. Please be advised that Benkers Trust Company also requests an informal conference before the bearing.

Agricultural Deficate Dared on D.S. 5219, 12 U.S.C. 548, First Agricultural Deficate Of Formation (c. v. State Tex form usion, 390 U.S. 339 (1943), and Piberty Det one) Desir and Text to. v. Duncastia, 33 H. . 24 933 (1949), which hold than Notional Fanks are except from New Took State and local sales and use taxes. State that tered banks should also be exampt from those taxes because of the effect of the Constitutions of the United States and of New Took.

We submit that Matter of Penk of Manhattan Company, 193 N V 515 (1971), should no league be followed. Communication was changed materially in the intervening twenty-five years since the Recision was leaved. There is no league buy significant functional difference between at the and not onal banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amaniment of the United States Constitution and under Assicle I, Section II of the New York Constitution since it would lack the Mattendard

2

State of New York Department of Texation and Finance

basis for classification" needed to sustain bloss logislation. Recause the Fahr of Manattan case provides an unconstitutional interpretation of Article K I, Section i, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission evved in proporing to dany our claim. For these reasons we request both a hearning before the State Commission and a preliminary informal conference.

Sincerely yours,

1572-11

September 9, 1969

State of New York
Pep etment of Tration and Finance
St te Compus
Albany New York 17225

Attention. Mr. Arthur H. Faskin
Yex Administrative Supervisor
Audit and Vaview Unit. Audit Group II

Gentlemen.

In accordance with the provisions of Section 1139/b) of the Tax Low. Bunkers Trust Company hereby applies for a hearing before the State Tax Complesion bread upon your denial, Sated July 7, 1969, of our classion for a verum or raises and use taxes in the mount of 91,185.845.95 dated June 19, 1969. Please be advised that Bankers Frust Company also requests in informal conference before the hearing.

Our claim is based on R.S. 5019, 10 U.S.C. 518, Mirst Agricultural National Rank of Berkshire Co. v. State Tax Cormission, 390 U.S. 339 (1968), and Liberty National Bank and fruct Co. v. Buserglia, 03 H.V. 04 933 (1969), which hold that Marional Banks are except from Nav orb State and local sales and use taxes. State chartered banks should also be exampt from these taxes because of the effect of the Constitutions of the United States and of Naw York.

We submit that Matter of Pank of Manhattan Company, 193 M.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decis on was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional underboth the Fourteenth Amendment of the United States Constitution and under Article 1, Section II of the New Ork Constitution since it would

lick the "mational basis for class fication" needed to sustain class leg slation. Because the Pank of Manhattan case provides an unconstitutional interpretation of Article K.T. Section ", that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of salar and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State lim Commission and a preliminary informal conference.

Sincerely yours,

13/P-11

Beauth (1967) (Section 2008) in the section of the

State of How York Department of Temption and Finance State Campus Albony, Ika York 12226

Acception: 12. Arthur M. Rookin

Tan Administrative Suvervisor

Audit and Royley Unit. Audit Group II

Contlemns

In accordance with the provisions of Section 1100(b) of the Tan Law, Benkero Treet Occupany hereby opplies for a bearing before the Etata Tex Commission based upon your dominal, dated May 5. 1970 of cur claim for a regund of cales and use tomos in the cheeses of (SA7, 923, 93 dated April 16, 1970. Please be advised that Denkers Trust Compuny also requests on informal conference before the hearing.

Cur claim is based on R.S. 5219, 12 U.S.G. 548. First Arminalismal Dational Park of Maximble Co. v. Stone Per Correspond, 962 U.O. 350. (1930), and Margary Dathernk Park and March Co. v. Proceeding, 20 U.Y. 24 930, (1932), which hold that Dates Dates are commit from New York Chate and Rocal dakes and use temps. Chate characted banks though also be enumpt from those taxes because of the effect of the Compadituations of the United Contes and of Hen York.

Us cubmit that Matter of Park of Manhattan Commany, 203 M.Y. 525 (1934), chall no larger to followed. Usrematerica have changed materially in the intervening theney-five years ofnee the decision was Control. There is no langur eny mignificant functional difference between plata and mathemal books. Thus any law or deciates which accompact to classify than differently usuad be unconsiduational under both the Fourteenth Amoniment of the United Coutes Canationstion and under Article I, Dection II of the New York Constitution pince it would lack the "rectonal basis for

State of New York Department of Tamation and Pinance

classification" needed to sustain class legislation. Ecoure the Bonk of liminatin case provides on unconditutional interpretation of Accided all, Contion 4, that section must now be read as require ing equal treatment for both coate and notionally chartered bonks.

Accordingly, we contend that we have a valid claim for a refund d calco and use temps and that the Commission erred in proposing to doug our claim. For those resonn up request both a hearing before the Crote Ton Commission and a preliminary informal conference.

Sincerely yours,

w. H.J.

大学 经研究 经加入制度 电流波播音

Addison to the transfer

Park and

The Hard College College College Street College

The second secon

And the second of the second o

A Control of the Cont

July 1, 1970

ARMADELER COLLEGE OF STANDARD STANDARD COLLEGE OF THE STANDARD COLLEGE OF THE

Assert of the control of the control

State of New York Department of Temption and Finance State Compus Albery - Day York 12226

Market Carlotter Commence

and graduate the second of the second

Attention: Mr. Anthur M. Reckin
Ton Administrative Supervisor
Andik and Review Unit. Andit Group II

Continumna

In accordance with the provisions of Section 1139(b) of the Tan Law, Benkers Trust Company hereby applies for a hearing before the State Tex Commission based upon your denial, dated they 5. 1979 of our claim for a regard of cales and use tomes in the empant of CSA7, 923, 93 dated April 16, 1970. Please be advised that Benkers Trust Company also requests an informal conference before the hearing.

Cur claim is based on R.S. 5219, 12 U.S.G. 548. <u>First</u>
Assistational Lational Dark of Barbahire Co. v. Same For Considering,
363 U.S. 530. (1900), and <u>Alberty Datherst Park and Serve Co. v. Proceeding</u>,
20 U.Y. 2d 930, (1939), which had that Hadsoni Forms are exempt from
Una York Case and local cakes and use tames. Cases chartered banks
though also be exempt from those tames because of the effect of the
Compatibutions of the United States and of Day York.

Us cubmit that Matter of Pank of Manhattan Cornary, 203, N.Y. 515 (1934), choil no league to followed. Givernathines have changed insteriolly in the intervening turnay-five years since the decision was found. There is no larger any eignificant functional difference between their and mathemal books. They any law or decision which attempted to classify them differently would be unconsitutional under both the Fourteenth Amendment of the United Caster Constitution and under Article I, Section II of the New York Constitution since it would lack the "retional book for

State of New orb Repartment of Jaxabion and Pinance

2.

lick the "rational basis for classification" needed to sustain class legislation. Because the Book of Manhattan case provides an unconstitutional interpretation of Article Kil, Section is, that section must now be read as requiring equal trettment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of salas and use taxes and that the Commission erred in proposing to demy our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincorely yours,

KWP-11

September 9, 1969

State of New Tork

Pep stiment of Francian and Finance
Stite Comput

Albuny New York 12005

Attention. Mr. Arthur H. Baskin
Tex Administrative Supervisor
Audit and Daview Unit, Audit Group II

Centlemen.

In accordance with the provisions of Section 1139/b) of the Tax Low. Dankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, sated July 7, 1969, of our claim for a veruna or sales and use taxes in the matter 31,185,845.04 dated June 10, 1969. Please be adviced that Bankers Frust Company also requests an informal conference before the hearing.

Agricultural National Bank of Barkshire Co. v. State Tax Commission, 39° U.S. 339 (1968), and Liberty National Bank and Fruct Co. v. Buscaglia, 73 N.C. 7d 933 (1969), which hold that Marianal Banks are exampt from New orb State and local sales and use taxes. State chartered banks should also be exampt from these taxes because of the effect of the Constitutions of the United States and of New York.

We cubmit that Matter of Pank of Manhattan Company, 193 M.V. 515 (1944), chould no longer be followed. Circumstances have changed meterially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Tourteenth Amendment of the United States Constitution and under Article 1, Section II of the New York Constitution since it would

2

State of New York Department of Pexation and Finance

basis for classification" needed to sustain blass legislation. Because the <u>Unit of Miniattin</u> case provides an unconstitutional interpretation of Article KT, Section i, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proporing to damy our claim. For these reasons we request both a hearning before the State "ax Commission and a preliminary informal conference.

Sinceraly yours,

1572-11

September 9, 1969

State of New York Department of Taxation and Finance State Compus Albany, New York 19826

Attention: Mr. Arthur M. Paskin
Tax Administrative Supervisor
Audit and Teview Unit, Audit Group II

Centlemen:

In accordance with the provisions of Section 1139(b) of the Tex Law, Benkers Trust Company hereby applies for a hearing before the State for commission based open your dated, Catal 12, 1260, of our claim for a refund of cales and use taxes in the amounts of 517, 199.72, 6126,051.58 and 6118.191.95 dated September 17, 1968, December 17, 1968 and March 19, 1969 respectively. Please be advised that Benkers Trust Company also requests an informal conference before the hearing.

Our claim is based on D.S. 5219, it U.S.C. 548, First Applicational Dank of Forbshire to, v. State Tax formulation, 390 U.S. 339 (1948), and Elberty Unt onel Lank and Lunt fo. v. Euccapia, 33 H. . 34 933 (1949), which hold that Hatford Fonks one except from May oak State and local sales and use taxes. State that tered banks should also be exampt from these taxes because of the effect of the Constitutions of the United States and of Nov. oak.

We submit that Matter of Papk of Manhattan Company, 193 N V 515 (1911), should no langua be followed. Givennationed have changed materially in the intervening twenty-five years since the decision was leaved. There is no langua buy significent functional difference between state and notional banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Ameriment of the United States Constitution and under Article I, Section II of the New orb Constitution since it would lack the "cational

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Eureau to be held prior to placing your application on the Hearing Unit calendar.

Very truly yours,

athur M. Paskin

Assistant Chief
Audit and Review Unit

JLB:aa

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on April 16, 1970 in the amount of \$647,923.98.

			4
Signature	 ^	Date	*****



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS

ALBANY, N. Y. 12226

TELEPHONE 474 - 2121

SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY TO Audit & Review Unit

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

Bankers Trust Company 16 Wall Street New York, New York

Attention Mr. Norman Pollack
Assistant Vice President

Claim for Refund \$647,923.98 (4/16/70)

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of \$647,923.98, is hereby being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N.Y. 2d 933, State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination, denying your claim in full, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.